

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-4411

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

SERGIO ALFREDO QUIRINO,

Defendant - Appellant.

Appeal from the United States District Court for the Western
District of North Carolina, at Asheville. Lacy H. Thornburg,
District Judge. (CR-02-59)

Submitted: March 11, 2004

Decided: March 17, 2004

Before WIDENER, WILKINSON, and MICHAEL, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Ronald E. Justice, Jr., GASPERSO & JUSTICE, P.A., Hendersonville,
North Carolina, for Appellant. Jerry Wayne Miller, Thomas Richard
Ascik, OFFICE OF THE UNITED STATES ATTORNEY, Asheville, North
Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Sergio Alfredo Quirino appeals his conviction, after a jury trial, of reentry of a removed alien in violation of 8 U.S.C. § 1326(b) (2000) and his thirty-seven month sentence. Counsel has filed a brief in accordance with Anders v. California, 386 U.S. 738 (1967) raising one potential issue, but stating that, in his view, there are no meritorious grounds for appeal. Quirino was advised of his right to file a pro se supplemental brief, but did not do so. We affirm.

Counsel questions whether the district court properly applied the Sentencing Guidelines* in sentencing Quirino. Because Quirino did not object to the presentence investigation report, we review for plain error. United States v. Vonn, 535 U.S. 55, 74-75 (2002); United States v. Martinez, 277 F.3d 517, 524-25 (4th Cir.), cert. denied, 537 U.S. 899 (2002). We therefore must determine whether (1) there was error; (2) that was plain; (3) that affected Quirino's substantial rights; and (4) if the first three criteria are met, whether we should exercise our discretion to notice the error. United States v. Olano, 507 U.S. 725, 732 (1993). Our review of the record convinces us that the district court correctly determined the applicable sentencing range under the Guidelines. To the extent Quirino asserts error in the district court's decision to sentence him to a particular term of imprisonment

*U.S. Sentencing Guidelines Manual (2002).

within the properly calculated Guidelines range, such an exercise of discretion by the district court is not reviewable. United States v. Porter, 909 F.2d 789, 794 (4th Cir. 1990).

As required by Anders, we have examined the entire record and find no meritorious issues for appeal. Accordingly, we affirm Quirino's conviction and sentence. This court requires that counsel inform his client, in writing, of his right to petition the Supreme Court of the United States for further review. If the client requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move in this court for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on the client. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED